



May 17, 1999

Mr. Jeffrey J. Horner  
Bracewell & Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR99-1342

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124093.

The Deer Park Independent School District (the “district”), which you represent, received a request for the file relating to the investigation of a district employee. You have provided the responsive information to our office for review. You contend that this information is excepted from public disclosure by Government Code sections 552.026 and 552.114. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.026 of the Government Code excepts from the disclosure requirements of the Public Information Act information contained in education records of an educational agency or institution except in conformity with Family Educational Rights and Privacy Act (“FERPA”), Section 1232g of title 20 of the United States Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). Section 552.026 of the Government Code requires the release of information requested under the Public Information Act to conform with FERPA. Under the federal statute, “education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). Section 552.114 of the Government Code excepts from disclosure, “information in a student record at an educational institution funded wholly or partly by state revenues.” Gov’t Code § 552.114.

This office has generally treated section 552.114 “student record” information as the equivalent of “education record” information that is protected by FERPA. Open Records Decision Nos. 634 at 5 (1995).

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 (1982), 206 (1978). In determining what information tends to identify a particular student, our office has adopted the definition articulated in federal regulations issued under section 1232g of title 20 of the United States Code. This regulation reads:

“Personally identifiable” means that the data or information includes (a) the name of a student (b) the address of the student, (c) a personal identifier, such as the student’s social security number or student number, (d) a list of personal characteristics which would make the student’s identity easily traceable, or (e) other information which would make the student’s identity easily traceable.

45 C.F.R. § 99.3 (1976); Open Records No. 165 at 4 (1977).

FERPA provides that, upon satisfaction of certain conditions not met here, a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student may be released. 20 U.S.C. § 1232g(a)(5)(A). We conclude that the submitted documents contain information that would personally identify a student and that is not “directory” information. We have marked the information the school district must withhold from public disclosure.

The Public Information Act prohibits the release of confidential information. Gov’t Code § 552.352. Section 552.101 of the Government Code excepts from public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Because release of confidential information constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general will ordinarily not raise an exception that a governmental body has failed to claim. Open Records Decision 455 at 3 (1987). We note that the submitted information includes documents that are apparently records of the identity, diagnosis, evaluation, or treatment of a patient that was created or maintained by a professional for the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder. Such records are made confidential by Health and Safety Code section 611.002 and must not be released pursuant to section 552.101 of the Government Code.

We have marked the submitted information in accordance with the above discussion. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 124093

encl. Marked documents

cc: Ms. Sharon Wehmeyer-Homoya  
Association of Texas Professional Education  
305 E. Huntland Drive, Suite 300  
Austin, Texas 78752  
(w/o enclosures)